



Monica Hincken

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December 15, 2023

VIA ECF

The Honorable Robert W. Lehrburger
United States District Court
Southern District of New York
500 Pearl Street, Courtroom 18D
New York, NY 10007

Re: Rinat Hafizov v. BDO USA, LLP, et al.; Case No.: 1:22-cv-08853 (JPC) (RWL)

Dear Judge Lehrburger:

We represent Plaintiff Rinat Hafizov and write jointly with Defendants pursuant to the Court's November 21, 2023 Order directing the parties to file a joint submission presenting the electronically stored information ("ESI") terms to which the Parties have and have not agreed. See Dkt. Nos. 146 and 158. The Parties engaged in two meet and confers in an attempt to reach further agreement on the search terms. While progress was made, as Exhibit A reflects, the Parties were unable to reach full agreement.

I. Plaintiff's Position

As an initial matter, Plaintiff has agreed not to seek the production of family files and to limit the timeframe of production for Ms. Bernier to January 1, 2017-present.

While the Parties were able to agree upon all search terms with a connector for Ms. Bernier, Mr. Dymont and Mr. Montorio, the Parties were unable to reach consensus on (1) any standalone search terms for Ms. Bernier, Mr. Dymont, and Mr. Montorio and (2) all search terms related to Human Resources employees Tenielle Comerford and Amanda Turcotte.

With respect to the standalone search terms, it is Plaintiff's position that there are several applicable and narrowly tailored search terms related to the allegations in the lawsuit that do not require a connector and do not pose an undue burden to Defendants. The narrowly tailored standalone search terms Plaintiff proposed during the parties' meet and confer discussions yielded the following results:¹

¹ Importantly, the hit report is not reflective of the more limited temporal scope the Parties have currently agreed upon for Ms. Bernier.



- **Bernier:** Animus (84 hits), Ethnic* (453), Gay (681), Homo* (377), Hostil* (481), Racist (171), Retaliate* (275), Shabbat* (28), Jewish.²
- **Dymont:** Retaliate* (49), Racist (86), Hostil* (142), Ethnic* (282).
- **Montorio:** Harass* (267), Racist (33), Retaliate* (23), Jewish.³

As evidenced by the number of hits on the search terms Plaintiff currently proposes, they do not impose an undue burden on Defendants. Further, the search terms are appropriately tailored to relate to the allegations raised in the Amended Complaint and in connection with Court's Order about the scope of discovery related to discrimination, which includes "communications sent by Ms. Bernier, Mr. Dymont or Mr. Montorio to other BDO employees that refer to one or more discriminatory protected characteristics related to nationality, ethnicity, race, or religion."⁴ See Dkt. Nos. 104 and 146.

With respect to the search terms related to Human Resources employees Tenielle Comerford and Amanda Turcotte, these search terms are directly related to the Court's Order that the relevant scope of discovery for retaliation includes "documents concerning Ms. Bernier, Mr. Dymont, and Mr. Montorio's engagement in retaliatory conduct and/or complaints about the same." Id. As Exhibit A details, the search terms related to Ms. Comerford and Ms. Turcotte⁵ are appropriately limited in both time and scope to encompass documents related to complaints made to Human Resources against Ms. Bernier, Mr. Dymont and Mr. Montorio related to retaliation.

II. Defendants' Position

Defendants respectfully submit this statement of position regarding Plaintiff's proposed search terms. The November 21, 2023 Order (the "Order") required the Parties to use appropriate connectors that would reasonably encompass:

- (1) communications sent by Ms. Bernier, Mr. Dymont, or Mr. Montorio to other BDO employees that refer to one or more discriminatory protected characteristics related to nationality, ethnicity, race, or religion; and,

² Plaintiff is also seeking the search term "Jewish." However, the term "Jewish" was not run as part of Defendants' hit report so the number of hits is currently unknown.

³ Id.

⁴ While the Court's Order does not specifically identify protected characteristics related to sexual orientation, Plaintiff believes this was an oversight given the allegations in the Amended Complaint include Plaintiff directly witnessing Ms. Bernier making discriminatory comments related to sexual orientation. See Dkt. No. 60 at ¶ 38.

⁵ Defendants previously searched documents related to Ms. Comerford and Ms. Turcotte using only variations of Plaintiff's initials, which clearly cannot encompass documents related complaints of retaliation made by other employees and is not in the spirit of the Court's Order. See Dkt. No. 136, Exhibit A.



- (2) documents concerning Ms. Bernier, Mr. Dymont, and Mr. Montorio’s engagement in retaliatory conduct and/or complaints about same.

See Dkt. No. 146. Defendants have met and conferred with Plaintiff’s counsel in good faith and have consented to the search terms proposed by Plaintiff that are reasonably tailored and relevant to the allegations in this matter. However, some of Plaintiff’s proposed terms continue to lack search term connectors, in plain contravention of the Court’s Order to “use appropriate connectors.” *Id.* While Defendants are not opposed to utilizing these search terms, they believe that reasonable search connectors must be applied to avoid the production of thousands of irrelevant and extraneous documents. Separately, some of Plaintiff’s proposed search terms plainly lie outside of the scope of the Court’s Order.

For the ease of the Court’s review, Defendants have drafted a color-coded document that visually represents the Parties’ outstanding disagreements. See Exhibit A, Pages 11–16. The color scheme within the document is as follows:

- Search terms in **green** are those that Defendants consent to.
- Search terms italicized and bolded in **orange** are those that Defendants consent to, to the extent that reasonable search term connectors are applied.
- Search terms struck through in **red** are those that Defendants do not consent to.

Defendants set forth their specific objections with the “red” and “orange” terms below.

A. Terms Regarding Sexuality are Unambiguously Outside the Scope of the Court’s Order

Plaintiff has demanded that Defendants search Ms. Bernier’s email files for the terms “gay” and “homo!”.⁶ However, these terms unambiguously lie outside the scope of the Court’s Order, which was limited to “discriminatory protected characteristics related to **nationality, ethnicity, race, or religion.**” See Dkt. No. 146. The November 21, 2023 Order is consistent with the Court’s earlier August 25, 2023 Order in which the Court ordered Defendants to produce “[c]ommunications sent by Ms. Bernier, Mr. Dymont, or Mr. Montorio to other BDO employees that refer to one or more discriminatory protected characteristics related to nationality, ethnicity, race, or religion.” See Dkt. No. 104. The terms “gay” and “homo!” do not fit within the categories enumerated by the Court, and are thus plainly outside the scope of the Court’s Order.

⁶ The exclamation point (!) represents a root expander, meaning that the term “homo!” will pick up any document containing the terms homosexual, homosexuality, homogenous, homonym, etc.



B. Searches of Amanda Turcotte and Tienielle Comerford's Email are Outside the Scope of the Court's Order

Plaintiff has further demanded that Defendants search the email inboxes of Amanda Turcotte and Tienielle Comerford, two BDO Human Resources professionals, for any hits regarding the terms "Bernier," "Dyment," and "Montorio," utilizing various search term connectors.

However, Defendants have already performed targeted searches of these two individuals' email records and informed Plaintiff that apart from Plaintiff's and Dennis Sweeney's allegations against Ms. Bernier, BDO has not received any discrimination or retaliation complaints against Ms. Bernier, Mr. Dyment, or Mr. Montorio. Defendants have already produced responsive, non-privileged documents (to the extent that such documents exist) from Ms. Comerford and Ms. Turcotte's email records regarding complaints of discriminatory and/or retaliatory behavior on the part of the Individual Defendants or Mr. Montorio. Finally, Defendants have also produced ESI documentation resulting from the terms "Rinat," "Hafizov," "RH," or "RXH" within Ms. Turcotte and Ms. Comerford's email records. *See* Dkt. No. 136-1.

Defendants believe that additional searches of Ms. Turcotte and Ms. Comerford's records would be superfluous and unlikely to lead to any relevant documentation that has not already been produced.

C. Search Terms without Connectors

The Court's Order required Plaintiff to propose "terms that use **appropriate connectors**" to procure relevant documentation. Contrary to the Order, Plaintiff has steadfastly refused to apply search term connectors to the terms highlighted and italicized in *orange* within the attached exhibit. *See* Exhibit A.

The use of search term connectors is crucial, because without such connectors the searches are likely to pick up thousands of irrelevant results. For instance, the term "Jewish," without any search term connector, will result in thousands of "hits" that include nothing more than the names of BDO's clients who operate Jewish day camps or community centers. The term "ethnic," without a search connector, would similarly pull irrelevant client spreadsheets in which the clients self-identify as "ethnic minority businesses."

Accordingly, Defendants propose reasonable search term connectors to the lone terms listed in Plaintiff's most recent proposal:⁷

⁷ For clarity purposes, Plaintiff's proposed search term is listed in *orange*. Defendants' proposed search connectors are listed afterwards in plain, black text.



Janet Bernier

- **retaliat!** w/25 (complaint OR lawsuit OR (“report” w/10 [“HR” OR “Human Resources”]) OR investigat! OR Dennis OR Sweeney OR Rinat OR Hafizov OR “RH” OR “RXH” OR Ejerekhile OR threat! OR litigation OR discriminat!)
- **(Jewish OR shabbat)** w/25 (animus OR hostile! OR bias OR religio! OR stereotyp! OR offensive OR discriminat! OR retaliat! OR hire! OR reject! OR interview! OR candidate! OR Greiner OR Radbill OR ([“leav!” OR “depart!”] w/10 “early”) OR unfair)
- **animus** w/25 (hostile! OR bias OR race OR racist OR racial OR religio! OR “national origin” OR stereotyp! OR Russia! OR Christian OR Italian OR Black OR “African American” OR offensive OR Jewish OR shabbat OR racist)
- **hostile!** w/25 (animus OR bias OR race OR racist OR racial OR religio! OR “national origin” OR stereotyp! OR Russia! OR Christian OR Italian OR Black OR “African American” OR offensive OR Jewish OR shabbat)
- **ethnic!** w/25 (animus OR bias OR race OR racist OR racial OR religio! OR “national origin” OR stereotyp! OR Russia! OR Christian OR Italian OR Black OR “African American” OR offensive OR Jewish OR shabbat)

Matthew Dymont

- **retaliat!** w/25 (complaint OR lawsuit OR (“report” w/10 [“HR” OR “Human Resources”]) OR investigat! OR Dennis OR Sweeney OR Rinat OR Hafizov OR “RH” OR “RXH” OR Ejerekhile OR threat! OR litigation OR discriminat! OR Bernier)
- **racist** w/25 (animus OR bias OR hostile! OR bias OR Black OR “African American” OR “South Asian” OR “national origin” OR Russia! OR Italian OR offensive OR discriminat! OR harass! OR stereotyp! OR Bernier)
- **hostile!** w/25 (animus OR bias OR race OR racist OR racial OR religio! OR “national origin” OR stereotyp! OR Russia! OR Christian OR Italian OR Black OR “African American” OR offensive OR Jewish OR shabbat OR Bernier)
- **ethnic!** w/25 (animus OR bias OR race OR racist OR racial OR religio! OR “national origin” OR stereotyp! OR Russia! OR Christian OR Italian OR Black OR “African American” OR offensive OR Jewish OR shabbat OR Bernier)



Nicholas Montorio

- **retaliat!** w/25 (complaint OR lawsuit OR (“report” w/10 [“HR” OR “Human Resources”]) OR investigat! OR Dennis OR Sweeney OR Rinat OR Hafizov OR “RH” OR “RXH” OR Ejerekhile OR threat! OR litigation OR discriminat! OR Bernier
- **harass!** w/25 (animus OR bias OR race OR racist OR racial OR religio! OR “national origin” OR stereotyp! OR Russia! OR Christian OR Italian OR Black OR “African American” OR offensive OR Jewish OR shabbat OR Bernier)
- **racist** w/25 (animus OR bias OR hostile! OR bias OR Black OR “African American” OR “South Asian” OR “national origin” OR Russia! OR Italian OR offensive OR discriminat! OR harass! OR stereotyp! OR Bernier)
- **Jewish** w/25 (animus OR hostile! OR bias OR religio! OR stereotyp! OR offensive OR discriminat! OR retaliat! OR hire! OR reject! OR interview! OR candidate! OR Greiner OR Radbill OR ([“leav!” OR “depart!”] w/10 “early”) OR unfair OR Bernier)

Defendants have attempted to tailor these search terms to the actual allegations within Plaintiff’s Complaint and other allegations asserted by nonparties to this matter. Again, Defendants consent to searching for all of the terms listed above, to the extent that their proposed search connectors (or other reasonable search term connectors) are applied.

We thank the Court for its time and attention to this matter.

Respectfully submitted,

A handwritten signature in blue ink that reads "Monica Hincken". The signature is fluid and cursive.

Monica Hincken

Cc: All counsel of record (*via* ECF)